

MID-CONTINENT COAL AND COKE CO.

IBLA 79-158

Decided June 14, 1979

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting coal lease application C-15816.

Vacated and remanded.

1. Coal Leases and Permits: Applications

Where the case record contains no documentation supporting BLM's conclusion that an applicant for a coal lease does not meet emergency coal leasing criteria, and where the applicant asserts on appeal that it can produce evidence establishing that it does meet these criteria, BLM's decision rejecting the application will be vacated, and the matter will be remanded to allow the applicant a reasonable time to provide this evidence.

APPEARANCES: David R. Sturges, Esq., Glenwood Springs, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 3, 1972, the Mid-Continent Coal and Coke Company (Mid-Continent) filed an application for a coal lease pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201 et seq. (1976), with the Colorado State Office, Bureau of Land Management (BLM). On December 6, 1978, BLM issued a decision rejecting Mid-Continent's application because it did not meet the emergency leasing criteria negotiated by the Department in the settlement of the appeal of NRDC v. Hughes, 437 F. Supp. 981 (D.D.C. 1977), which criteria were the subject of an amended order issued by the court on June 14, 1978.

[1] The case record contains no documentation supporting BLM's conclusion that Mid-Continent's application did not meet these emergency criteria. However, Mid-Continent's submissions on appeal did not demonstrate, or even allege, that its application did fall within these criteria. Having been notified of its failure to assert its purported compliance with these criteria, Mid-Continent filed an additional document asserting as follows:

1. Mid-Continent believes that it qualifies for further consideration of its lease application C-15816 based on the "by-pass" criteria set forth in the amended order in NRDC v. Hughes. Mid-Continent does not, by this statement, wish to waive its right also, or in the alternative, to present evidence for possible future consideration under the "maintenance of production or contracts" criteria.

2. Mid-Continent believes it can produce to the Colorado State office of the BLM, in support of its assertion of compliance with the "by-pass" criteria, evidence of the following nature:

(a) the small amount of recoverable coal reserves in the proposed leasehold would make it an uneconomical venture and cause significant increased environmental harm and costs for an independent coal operator to recover such proposed leased coal alone.

(b) Mid-Continent controls most surrounding land and access to this proposed coal lease area.

(c) Mid-Continent currently has extensive underground coal operations in the area of this proposed coal lease and its current mining plans could mine this proposed leasehold in an orderly sequence without significantly increased environmental costs.

In view of this assertion, it is appropriate to vacate BLM's decision rejecting Mid-Continent's application and to remand the matter to BLM to allow Mid-Continent to demonstrate its compliance with these criteria. This holding is consistent with Instruction Memorandum No. 78-481, Change 1, issued on November 28, 1978, by BLM's Washington, D.C., office, advising the Colorado State Office that it should allow applicants a reasonable time, usually 30 days, to provide information needed to determine if they meet the emergency leasing criteria, on pain of rejection of their offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the matter is remanded for action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Newton Frishberg
Chief Administrative Judge

